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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Sugar Hill and Toccoa, GA)

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)
) MM Docket No. 98-162
) RM-9263
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To: Chief, Allocations Branch

COMMENTS

El Dorado Communications, Inc. ("El Dorado"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits comments in the above-referenced rulemaking proceeding. El Dorado is the corporate parent of licensees of broadcast stations in California and Texas.

In the Notice of Proposed Rulemaking issued in the above-referenced proceeding, released September 11, 1998 (the "NPRM"), the Commission solicited comments on the question of whether the precedent set in Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992) should be continued, and whether the policy should be extended to other short-spaced situations. El Dorado submits that the policy should be continued and should be extended. In support whereof, the following is stated:

1. Section 420(i) of the Commission's Rules permits the modification of an FM or television station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. In Newnan and Peachtree City, supra, the Commission reallocated an FM channel from Newnan to Peachtree

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City pursuant to Section 420(i), even though the station in question was a “grandfathered” short-spaced station. In doing so, the Commission recognized that the reallocation was creating a new short-spaced allotment, technically in contravention of Section 73.207 of its Rules, but reasoned that because no site change was proposed and, therefore, no new short-spacing would be created, no existing short-spacing would be exacerbated, and the potential for interference would not be increased, there was no reason to deny the licensee the benefit of a Section 420(i) community change.

The Policy Should be Continued

2. The precedent set in Newnan and Peachtree City should continue to be followed by the Commission because: (a) the Commission’s reasoning is sound; (b) its application of Section 420(i) of its Rules is equitable; and (c) the policy serves the public interest.

(a) The Commission’s Reasoning is Sound. It is reasonable for the Commission to allow a “grandfathered” short-spaced station (i.e., a pre-1964 station that does not meet the current spacing requirements) to change its community of license pursuant to Section 1.420(i), as long as the station proposes no change in site. In such circumstances, the goal of a Section 1.420(i) community change – a preferential arrangement of allotments without a net loss in service – can be met whether a station is short-spaced or fully-spaced. While the first scenario does result in a new short-spaced allotment in the FM Table of Allotments, a short-spaced allotment is also eliminated, resulting in no net change to the Table. Accordingly, the Commission’s decision to extend Section 420(i) to grandfathered short-spaced stations was a sound and reasonable one, and the policy should be continued.

(b) The Commission’s Application of Section 420(i) is Equitable. There is no rational basis for distinguishing between fully-spaced stations and grandfathered short-spaced

stations in the application of Section 1.420(i) as established in Newnan and Peachtree City. The limitation set forth in that case, i.e., that a short-spaced station may propose a community change as long as no site change is proposed, ensures that no reduction in service will result. Thus, fundamental fairness requires that short-spaced stations, as well as fully-spaced stations, be permitted to take advantage of Section 420(i) to improve their service to the public.

(c) The Policy Serves the Public Interest. Extension of Section 1.420(i) to short-spaced stations serves the public interest because it allows more stations to provide first aural transmission, first aural reception, and/or first local transmission service to communities lacking such services. Provision of these services, and the resulting “preferential arrangement of allotments,” is the goal of the Section 307(b) of the Communications Act of 1934, as amended, and the Commission has specifically stated that Section 1.420(i) of its Rules was adopted to further the goals of Section 307(b). See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). Accordingly, the public interest is served by allowing short-spaced, as well as fully-spaced, stations the opportunity to change communities under Section 420(i), in furtherance of the Commission’s FM allotment goals.

The Policy Should be Extended

3. Not only should the policy set forth in Newnan and Peachtree City be continued, it should be extended to other short-spaced stations. As with grandfathered short-spaced stations, limiting other short-spaced stations to Section 420(i) community changes to situations where no site change is proposed will ensure that no new short-spacings are created, existing short-spacings are not exacerbated, and the potential for interference is not increased. The three-pronged rationale for continuing the Newnan and Peachtree City policy set forth above (i.e.,

sound application of the Commission's Rules, equitable treatment of licensees, and serving the public interest), applies equally to grandfathered short-spaced stations and post-1964 short-spaced stations. Consequently, the policy should be extended to allow all short-spaced stations the benefits of a Section 1.420(i) community change.

4. In sum, El Dorado Communications, Inc., respectfully submits that reason, equity and the public interest dictate that the policy set forth in Newnan and Peachtree City, supra, should be continued for pre-1964 short-spaced stations, and should be extended to post-1964 short-spaced stations.

Respectfully submitted,

EL DORADO COMMUNICATIONS, INC.

By: Mary L. Plantamura
Lawrence Roberts
Mary L. Plantamura

Davis Wright Tremaine LLP
1155 Connecticut Avenue NW
Suite 700
Washington, DC 20036
(202) 508-6600

Its Counsel

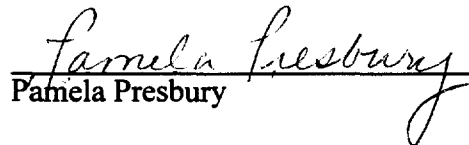
November 2, 1998

CERTIFICATE OF SERVICE

I, Pamela Presbury, an executive assistant in the law firm of Davis Wright Tremaine LLP, do hereby certify that copies of the foregoing "Comments" have been sent by first-class U.S. mail, postage prepaid, this 2nd day of November, 1998, to the following:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, DC 20036
Counsel for Southern Broadcasting of Pensacola, Inc.

*John A. Karousos, Esq.
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 565
Washington, DC 20554


Pamela Presbury

* BY HAND